

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID SWANK PRINCE,
Petitioner,

v.

MICHAEL RAMSEY,
Respondent.

No. 2: 20-cv-1962 TLN KJN P

ORDER

Petitioner is a prisoner, proceeding without counsel, with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. In the petition, petitioner alleges that he was convicted of assault with a deadly weapon in Butte County Superior Court. The petition raises two claims: 1) ineffective assistance of counsel; and 2) violation of Brady v. Maryland, 373 U.S. 83 (1963).

On November 9, 2020, the undersigned issued an order finding that petitioner's claims were not exhausted. (ECF No. 6.) The undersigned granted petitioner thirty days to file a motion for stay and abeyance pursuant to Rhines v. Weber, 544 U.S. 269 (2005). (Id.) On December 7, 2020, petitioner filed a motion to stay. (ECF No. 11.)

After issuing the November 9, 2020 order, the undersigned reviewed the docket from the Butte County Superior Court regarding petitioner's case. This docket indicates that petitioner was charged with assault with a deadly weapon in violation of California Penal Code § 245(a)(1). On or around August 14, 2020, petitioner was found guilty following a jury trial. The last entry

1 on the docket is from a sentencing hearing held on December 9, 2020. The docket describes the
2 case status as “active.” Thus, it does not appear that a final judgment has been entered in
3 petitioner’s case.

4 Title 28 U.S.C. § 2254(a) states:

5 The Supreme Court, a Justice thereof, a circuit judge, or a district
6 court shall entertain an application for a writ of habeas corpus in
7 behalf of a person in custody pursuant to a judgment of a State court
only on the ground that he is in custody in violation of the
Constitution or laws or treaties of the United States.

8 28 U.S.C. § 2254(a); see also, Rule 1 Governing Section 2254 Cases in the United States District
9 Court.


10 If no judgment has been entered in petitioner’s case, this court does not have jurisdiction
11 to consider petitioner’s habeas corpus petition. Accordingly, petitioner is ordered to show cause
12 why this action should not be dismissed for lack of jurisdiction

13 Petitioner has also filed three motions for appointment of counsel. (ECF Nos. 7, 10, 11.)
14 These motions are denied without prejudice on the grounds that it appears that the court lacks
15 jurisdiction to consider petitioner’s habeas corpus petition. Petitioner may renew these motions if
16 the undersigned determines that there is jurisdiction to consider his habeas corpus petition.

17 Accordingly, IT IS HEREBY ORDERED that:

- 18 1. Within thirty days of the date of this order, petitioner shall show cause why this action
19 should not be dismissed for lack of jurisdiction;
20 2. Petitioner’s motions for appointment of counsel (ECF Nos. 7, 10, 11) are denied
21 without prejudice.

22 Dated: December 14, 2020

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24 KENDALL J. NEWMAN
25 UNITED STATES MAGISTRATE JUDGE

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